FILED
NOV 5 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-723

SHELBY COUNTY GOVERNMENT,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GEORGE T. LEWIS, JR.
County Attorney
160 N. Main Street
Memphis, Tennessee 38103

STEPHEN H. BILLER
Assistant County Attorney
2020 First Tennessee Building
Memphis, Tennessee 38103
Counsel for Petitioner

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutory Provisions Involved	2
Statement of the Case	3
I. The Charge and the Administrative Subpoena	3
II. The Ruling of the District Court	4
III. Ruling of the Court of Appeals	6
Reasons the Writ Should be Granted	7
1. The Decision Below Conflicts with Decisions of Other Courts of Appeals as to the Permissible Scope of EEOC Investigation Based Upon a Limited Charge Filed by an Individual	7
2. The Decision Below Conflicts with the Decisions of Other Courts of Appeals as to the Standard of Review of the District Court's Discretion in Limiting the Scope of the EEOC's Administrative Subpoena to Matters Reasonably Related to the Charge	10

3. In Ordering Consideration of Matters Beyond the Scope of the Pleadings, the Decision Below So Far Departs from the Accepted and Usual Course of Judicial Proceedings as to Call for an Exercise of this Court's Supervisory Power 12

Conclusion 13

Certificate of Service 15

Appendix:

Opinion of the Court of Appeals for the Sixth Circuit, July 2, 1979, not reported A-1

Opinion of the District Court for the Western District of Tennessee, January 17, 1977, not reported A-4

Opinion of the District Court for the Western District of Tennessee, March 4, 1977, not reported A-7

Charge of Discrimination filed with EEOC, April 17, 1974 ..... A-10

Administrative Subpoena Duces Tecum and Subpoena ad Testificandum, May 20, 1975 ..... A-12

Section 709(a), Civil Rights Act of 1964; 42 U.S.C. §2000e-8(a) A-15

TABLE OF AUTHORITIES

Cases

Page

Blue Bell Boots, Inc. v. EEOC, 418 F.2d 355 (6th Cir., 1969) 9

East Texas Motor Freight Systems, Inc. v. Rodriguez, 431 U.S. 395 (1977) 13

EEOC v. Packard Electric Division, General Motors Corp., 569 F.2d, 315 (5th Cir., 1978) 8,10,11

Georgia Power Company v. EEOC, 412 F.2d 462, 468 (5th Cir., 1969) 8

International Business Machines Corp. v. Edelstein, 526 F.2d 37, 46 (2d Cir., 1975) 12

Joslin Dry Goods Co. v. EEOC, 483 F.2d 178 (10th Cir., 1973) 8

Marshall v. Westinghouse Electric Corp., 576 F.2d 588, n.4 (5th Cir., 1978) 11

New Orleans Public Service, Inc. v. Brown, 507 F.2d 160 (5th Cir., 1975) 13

Rish v. United States, 272 F.2d 60, 61 (4th Cir., 1959) .. 12

United States v. Tyrrell, 329 F.2d 341, 345 (7th Cir., 1964) 12

Statutes

28 U.S.C. §1254(1) 2

42 U.S.C. §2000e-8(a) of the Civil Rights Act of 1964... 2,7

§709(a) of Title VII of the Civil Rights Act of 1964 2,7,8

§710 of the Civil Rights Act of 1964..... 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

SHELBY COUNTY GOVERNMENT,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, Shelby County Government, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above case on July 2, 1979.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Sixth Circuit, dated July 2, 1979, which is not reported, is reproduced in the Appendix hereto (App. p. A-1).

The Opinion of the District Court for the Western District of Tennessee, dated January 17, 1977, which is not reported, is reproduced in the Appendix hereto (App. p. A-4). The District Court's Opinion dated March 4, 1977, which is not reported, is reproduced in the Appendix hereto (App. p. A-7).

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on July 2, 1979. A timely petition for rehearing was denied on August 28, 1979, and this petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. What are the standards by which an individual's EEOC charge limits the permissible scope of the EEOC's investigation into employment practices of independent and autonomous divisions and departments of his employer with which he has had no connection, in which he was not employed, and the practices of which are neither within the ambit of his charge nor the scope of his knowledge?

2. What are the standards by which a court of appeals should review the exercise by a district court of its discretion in limiting the scope of an administrative subpoena issued by the EEOC to areas of inquiry which are reasonably related to the charge which was filed?

3. Do policy considerations of Title VII set a special standard so that courts of appeals may direct district courts on remand to consider questions of class certification when no such questions were raised by the pleadings in the case?

STATUTORY PROVISIONS INVOLVED

Section 709(a) of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-8(a), is reproduced in the Appendix hereto (App.p. A-15).

STATEMENT OF THE CASE

The respondent, Equal Employment Opportunity Commission ("EEOC"), initiated this action to enforce an administrative subpoena issued by it purportedly to assist it in investigating a charge of discrimination filed by Hughley Moore, Jr., an employee of the Management Programs Department of Shelby County, Tennessee. Although Mr. Moore's employment experience had been limited to a single department of the Shelby County Government, the subpoena sought information and records concerning all persons employed by Shelby County Government, in all of its multi-faceted and autonomous departments, including departments not under its jurisdiction, although a part of the Government. Jurisdiction for the proceeding in the district court to enforce the EEOC's administrative subpoena was based upon §710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-9).

I. The Charge and the Administrative Subpoena.

On January 17, 1974, Mr. Hughley Moore, Jr., an employee of the Management Programs Department, Personnel Division, of Shelby County, Tennessee, filed a charge of employment discrimination with the Equal Employment Opportunity Commission. A copy is reproduced in the Appendix (App. p. A-10). On May 20, 1975, the EEOC served the County with an administrative subpoena duces tecum and subpoena ad testificandum seeking, among other things, information concerning all persons employed by Shelby County, Tennessee. A copy is reproduced in the Appendix (App. p. A-12).

Since charging party Moore had been an employee of the Management Programs Department, Personnel Division, the County responded to the Commission's demands by furnishing a list of all Management Programs Department employees annotated to reflect date of hire, current salary, classification, promotions, transfers and salary increases. However, in a peti-

tion to revoke district director's subpoena, filed with the EEOC, the County made clear its position that the remaining information sought by the EEOC was irrelevant, immaterial and beyond the proper scope of the inquiry into the charge filed by Hughley Moore, Jr.

II. The Ruling of the District Court.

The EEOC filed a petition for enforcement of its subpoena in the district court, and on January 14, 1977, the court conducted a show cause hearing on the EEOC's petition. The proof before the court showed that the government of Shelby County, the largest county in Tennessee, consists of a large number of branches and divisions, carrying on the normal executive, legislative and judicial functions of a local government. Employees of Shelby County may be nurses at the hospital, guards at the penal farm, deputy clerks in the office of the probate court clerk, members of the county's legislative body or their assistants, deputy sheriffs, employees in the county assessor's office, employees of the county health department, teachers employed by the county board of education, or may hold any number of other jobs for the government. Many of the approximately six thousand county employees work under elected officials, who are *not* responsible to any central authority, but only to the people who elected them. Thus, employment practices relating to an employee in one such division has absolutely no relation to the employment practices relating to an employee in a different division.

At the hearing the court determined that the solitary charge of Hughley Moore, who had been employed only in the Management Programs Department of the Personnel Division, was an insufficient basis for the EEOC to be granted access to the personnel records of *all* County employees in the course of its Title VII investigation. Consequently, the court limited the EEOC's access to County employment records solely to the

County Personnel Department, County Administrative Office, and County Insurance Office, with all of which the court found the claimant, Hughley Moore, Jr., had a "basis or connection."

At the January 14, 1977 hearing, the EEOC claimed that it should have been granted access to all of the County's employment records because of matters raised in "numerous" other charges which had been filed against the County. Thus, in its January 17, 1977 order, the district court afforded the EEOC an opportunity to file copies of any additional charges which might support its petition seeking enforcement of the all-encompassing subpoena (App. p. A-6). Subsequently, the Commission filed a list of only three uninvestigated charges, none of which had been filed prior to the issuance of the Commission's May 20, 1975 subpoena and only one of which even vaguely suggested county-wide allegations. On March 4, 1977, the court ordered the County to provide information relating to three additional areas or departments with which the charging parties in the three additional charges were associated. In denying enforcement of the EEOC's subpoena as to other unrelated departments, the court noted:

> The Shelby County Government is a large and varied institution. It covers many different operations, many entirely unrelated to others, different locations, distinctive service and/or political responsibilities, and many varieties of functions. A very few isolated charges of separate individuals as to racial discrimination in respect to hiring or promotion of blacks in a few areas of County Government does not reasonably give a basis for the broad, extremely wide-scale demands for records of the EEOC as to virtually all areas of County Government.

The court further ruled:

> If and as investigation based upon these records and complaints reasonably demonstrates a need for further infor-

mation, this Order is not intended to preclude reasonable further related investigation in other appropriate areas or future demands for records in related departments or areas.

III. Ruling of the Court of Appeals.

Upon appeal by the EEOC, the Court of Appeals for the Sixth Circuit reversed the decision of the district court, allowing enforcement of the subpoena with respect to the entire Shelby County Government, including divisions and departments with respect to which none of the charging parties had any connection.

The ruling of the court of appeals is based upon the erroneous assumption that the complaint sought certification of a class of individuals employed by Shelby County Government. The charging party, Hughley Moore, has not filed a judicial complaint based upon his charge of discrimination, alleging either an individual wrong or a class wrong. Furthermore, the EEOC's application for enforcement of its subpoena is predicated upon Hughley Moore's individual charge and not upon averments that a class action would be appropriate. Nevertheless, ruling that the information sought is relevant to the question of class certification, the court of appeals allowed enforcement of the subpoena as to all such information without any finding either that the district court committed clear error in limiting the scope of the subpoena to those departments with which the various charging parties had a relationship or that the information sought was relevant to the individual charges of discrimination, as required by §709(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-8(a).

REASONS THE WRIT SHOULD BE GRANTED

This Petition presents questions of extreme importance which have never been passed upon by this Court. In this case, the Sixth Circuit has summarily disregarded the prevailing authority in other circuits by disregarding the requirement of a relationship between an EEOC charge filed by an individual and the scope of the EEOC investigation expected to stem from the charge, by ignoring the discretion of the district court in limiting the scope of the administrative subpoena to matters reasonably related to the charge, and by raising issues of class certification which are beyond the scope of the record in this case. In short, there exists compelling reason for granting this writ.

1. The Decision Below Conflicts with Decisions of Other Courts of Appeals as to the Permissible Scope of EEOC Investigation Based upon a Limited Charge Filed by an Individual.

Contrary to the decisions of other circuits the Sixth Circuit Court of Appeals has ruled in this case that in investigating a charge of discrimination filed by an individual employee of one division of an employer the EEOC may obtain employment records with respect to other divisions of the employer even though the separate divisions have independent and autonomous hiring, promotion and firing practices. This result ignores the language of Section 709(a) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-8(a), which limits the EEOC's investigations to matters which are *relevant* to the charge under investigation. Section 709(a) states:

> In connection with any investigation of a charge filed under Section 706, the Commission . . . shall . . . have access to any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title *and is relevant to the charge under investigation*. (emphasis supplied)

The legislative history of the Civil Rights Act of 1964 indicates that this relevancy limitation upon the EEOC's investigatory powers was added by amendment to a provision which would have allowed the EEOC more open-ended investigatory powers and was intended to prevent "fishing expeditions" by the EEOC. *Georgia Power Company* v. *EEOC,* 412 F.2d 462, 468 (5th Cir., 1969).

The Courts of Apeals for the Tenth and Fifth Circuits have ruled on the question of the proper scope of an EEOC investigation as to employment practices of independent and autonomous employing units and work units of an employer and have disallowed the EEOC's broad requests for employment information regarding hiring units with which the charging party has no connection. In *Joslin Dry Goods Co.* v. *EEOC,* 483 F.2d 178 (10th Cir. 1973), the Court of Appeals for the Tenth Circuit analyzed the relationship between an individual's EEOC charge and EEOC's investigation of separate, autonomous employing units, concluding:

> The record before this Court is adequate to permit an inference that each of the Joslin Stores was *a separate employing unit.* It was not shown that there were any hiring or firing practices and procedures applicable to all of the stores. This being so, the decision of the district court limiting the demand of EEOC to the Downtown Denver store is affirmed. *Id.* at 183. (emphasis supplied)

Likewise, in *EEOC* v. *Packard Electric Division, General Motors Corp.,* 569 F.2d, 315 (5th Cir. 1978), the Court of Appeals for the Fifth Circuit ruled that the relevance standard of section 709(a) of the Civil Rights Act of 1964 limits the scope of the EEOC investigation to the charging party's "employing unit or work unit." The court stated:

> In the context of an investigation of an individual complaint, it might be most natural to focus on *that employing unit or work unit from which came the decision of which*

> *the individual complainant complains* . . . [I]n the absence of some showing of the EEOC to the contrary, it is not immediately evident that this unit need be or is in this case the entire facility or that an entire facility-wide workforce breakout bears on the subject matter of these individual complaints. *Id.* at 318 (emphasis supplied)

Thus the Tenth and Fifth Circuits agree that where a large employer does not have centralized hiring practices but rather consists of a number of autonomous employing units or work units, the EEOC's investigation should be limited to that unit within which the charging party was employed. Only that unit's employment practices are relevant to the charge because the various employing units are acting separately, and a charge of discriminatory practices in one unit does not impugn the practices of another unit.

Prior to the decision in this case the decisions of the Sixth Circuit Court of Appeals were not in conflict with this principle. In *Blue Bell Boots, Inc.* v. *EEOC,* 418 F.2d 355 (6th Cir., 1969), the Sixth Circuit allowed the EEOC to obtain employment records concerning employment *positions* other than those held by the charging party, but the employer in that case was made up of a single employing unit rather than separate units with independent decision-making power. Therefore, in *Blue Bell Boots,* the Sixth Circuit did not address the question of relevancy when an employer is composed of several employing units. In *Shelby County Government* v. *EEOC,* however, the Sixth Circuit has radically departed from these standards by allowing enforcement of the EEOC's subpoena of employment data from departments of the Shelby County government with which the charging party had no connection and which operate separately from the charging party's department. As the proof in the district court demonstrated, the Shelby County government consists of numerous departments and divisions, which perform various executive, legislative and judicial functions, and each of which independently makes its own employment policies and

decisions. Certainly an isolated charge, which, for example, alleges discrimination in the county health department can have no bearing upon the employment practices of the county's entirely separate court system..

In so ruling the Sixth Circuit has thrown out entirely the requirement of Title VII that the EEOC's investigation is limited to matters which are "relevant to the charge under investigation." What can the relevancy requirement mean if it does not mean that there must be some relation between employment practices complained of in the charge and the information sought by the EEOC in investigating the charge? Contrary to the decisions of other circuits, the Sixth Circuit has allowed the Commission to embark upon a "fishing expedition" into practices of employing units unrelated to the charge of discrimination filed with the EEOC. If the decision is allowed to stand, each individual charge of discrimination, no matter how limited, will serve as a springboard for EEOC investigation into employing units with which the charging party has no connection. This result is not contemplated by Title VII and should be reversed.

2. The Decision Below Conflicts with the Decisions of Other Courts of Appeals as to the Standard of Review of the District Court's Discretion in Limiting the Scope of the EEOC's Administrative Subpoena to Matters Reasonably Related to the Charge.

In reversing the ruling of the District Court that the EEOC investigation is limited to matters relevant to the charge before the EEOC, the Sixth Circuit Court of Appeals merely substituted its judgment for that of the District Court and created a conflict with the decisions of the Court of Appeals for the Fifth Circuit as to the standard of review which should be applied. In *EEOC* v. *Packard Electric Division, General Motors Corp.*, 569 F.2d 315 (5th Cir. 1978), the Court of Appeals for the Fifth Circuit discussed in detail the standard by which a court of appeals

should review the district court's determination with respect to enforcement of EEOC administrative subpoenas. The court ruled that it would not reverse a district court's determination of the relevance to the charge of information subpoenaed by the EEOC unless that determination is *clearly erroneous.* The court of appeals stated:

> Since the question of relevance in this instance is essentially a factual determination concerning the interrelation or lack thereof of different groups of facts, we must uphold the district court's determination unless it is clearly erroneous. *Id.* at 318.

Based on this standard the Fifth Circuit refused to overturn the district court's finding that the EEOC's subpoena should be limited to the employing unit or work unit where the individual complainant was working.

The Fifth Circuit confirmed the "clearly erroneous" standard of review in *Marshall* v. *Westinghouse Electric Corp.*, 576 F.2d 588, n.4 (5th Cir. 1978). The court there stated that to move beyond the source of the complained-of discrimination—the employing unit or work unit—the EEOC must show a more particularized need and relevance. *Id.* at 592. Thus, as the Fifth Circuit stated in *Packard Electric,* such a ruling "leaves it open to the EEOC to show, if it can, the relevance of the plant-wide work force breakouts at some later stage in its investigation." *EEOC* v. *Packard Electric Division, General Motors Corp., supra,* at 318. In absence of such a special showing the district court's limitation on the EEOC's subpoena should stand.

In *EEOC* v. *Shelby County Government,* the district court ruled that its "Order is not intended to preclude reasonable further related investigation in other appropriate areas or future demands for records in related departments or areas." (District Court's Order of March 4, 1977, App. p. A-7) Therefore, the order of the district court was entirely in line with these decisions of the Fifth Circuit Court of Appeals. However, the Sixth

Circuit overturned the decision of the district court without requiring the EEOC to demonstrate the relevance of information about other employing units of Shelby County Government to the charge of discrimination and without any finding of clear error in the district court's ruling. In reversing the district court, the court of appeals merely stated that it found to be relevant items which the district court had found were not relevant, thereby substituting its judgment for that of the district court. Therefore, the Sixth Circuit has established a different standard of review than that applied in the Fifth Circuit, creating a conflict among circuits which should be resolved by this Court.

3. In Ordering Consideration of Matters Beyond the Scope of the Pleadings, the Decision Below So Far Departs from the Accepted and Usual Course of Judicial Proceedings as to Call for an Exercise of this Court's Supervisory Power.

In ruling that enforcement of the EEOC's subpoena should have been allowed since the information sought is "relevant to the question of class certification," the Sixth Circuit has violated the concept of appellate review and has acted in excess of its powers since no question of class certification is raised in the pleadings of this case. This case is a suit by the EEOC to enforce an administrative subpoena, and therefore, no questions of class certification arise. Nevertheless, the court of appeals on its own initiative has in its order raised issues of certification of a class.

A court of appeals does not have the power to review matters outside the record or to direct that other matters should go into the record unless the district court has erroneously excluded evidence submitted by a party. Furthermore, a court of appeals will not rule on issues which were not raised in the pleadings or in the evidence in the district court or which have not been urged on appeal. *United States* v. *Tyrrell,* 329 F.2d 341, 345 (7th Cir., 1964); *Rish* v. *United States,* 272 F.2d 60, 61 (4th Cir., 1959); *International Business Machines Corp.* v. *Edelstein,* 526 F.2d

37, 46 (2d Cir., 1975). These principles govern Title VII cases just as they do any other case since suits under Title VII are not to be singled out for special relaxed treatment. *See, e.g., East Texas Motor Freight Systems, Inc.* v. *Rodriguez,* 431 U.S. 395 (1977). For these reasons your petitioner respectfully invokes the supervisory powers of this Court to overturn this improper decision of the Court of Appeals for the Sixth Circuit, which grossly deviates from the normal course of judicial proceedings and from that court's appellate review function.

CONCLUSION

The Shelby County Government is composed of a diverse set of governmental bodies, boards, agencies, commissions, and elected officials, each with its respective independent personnel policies and practices. In addition to the three traditional branches of government in Shelby County, there is an independently elected Board of Education, plus numerous elected officials such as County Clerk, Register, Sheriff, Assessor, Trustee, and Attorney General.

The evidence adduced at the hearing in the district court below reflects that out of the last thirty-eight charges filed against various departments of the County, seventy-five per cent (75%) were found by the EEOC to be meritless. This fact reflects that discrimination does not exist on a county-wide basis. Respondent made no argument as to class certification nor did it allude to same. The fact that the information requested is readily available does not make it relevant either under Title VII or Rules 26 and 45 of the Federal Rules of Civil Procedure.

The standard of review for the issues raised in the case at bar is the same as any other subpoena for documents under the Federal Rules of Civil Procedure. *New Orleans Public Service, Inc.* v. *Brown,* 507 F.2d 160 (5th Cir., 1975). Since the district court based its partial denial of the subpoena on the criterion of

relevance, the court of appeals erred and overstepped its jurisdiction and authority by substituting its opinion for that of the lower court without any finding that the district court committed clear error or that the information sought was relevant to the individual charge of discrimination under investigation, as required by Title VII. The court of appeals also erred by embracing the concept of class certification, which was not put forth by Respondent.

Petitioner is unable to find a court decision which clearly delineates the parameters of investigation by the EEOC in absence of a Title VII judicial complaint. This question requires the attention of this Court.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Sixth Circuit.

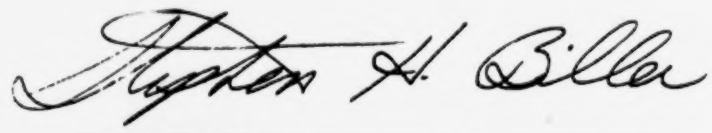
Respectfully submitted,

GEORGE T. LEWIS, JR.
County Attorney
160 North Main Street
Memphis, Tennessee 38103

STEPHEN H. BILLER
Assistant County Attorney
2020 First Tennessee Building
Memphis, Tennesse 38103

Certificate of Service

I hereby certify that on this 2nd day of November, 1979, three copies of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit were mailed, postage prepaid, to Sharon Danch, Attorney, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D. C., 20506, Counsel for Respondent, and to Solicitor General of the United States, Department of Justice, Washington D.C. 20530. I further certify that all parties required to be served have been served.



STEPHEN H. BILLER
Assistant County Attorney
2020 First Tennessee Bank Building
Memphis, Tennessee 38103
Counsel for Petitioner

APPENDIX

APPENDIX A

Nos. 77-1348-49
United States Court of Appeals
for the Sixth Circuit

Equal Employment Opportunity
Commission,
Petitioner-Appellant,
Cross-Appellee,

vs.

Shelby County Government,
Defendant-Appellee,
Cross-Appellant.

Before: EDWARDS, Chief Judge, ENGEL and MERRITT, Circuit Judges.

ORDER

(Filed July 2, 1979)

On receipt and consideration of an appeal and cross-appeal in the above-styled case; and

On receipt and consideration of the briefs, appendices and oral argument; and

Recognizing that this proceeding was filed before the Equal Employment Opportunity Commission by a single black individual who alleged that he had been denied promotion because of racially discriminatory employment policies on the part of the employer, Shelby County Government, and that the complaint sought certification of a class of such individuals employed by said employer; and

That a Commissioner of EEOC had authorized issuance of a subpoena to said employer for a number of records, and that on the employer's refusal to produce same in the present proceeding to enforce said subpoena, that the District Judge had granted enforcement as to all records directly relevant to the individual complaint, but had deferred action on those portions of the subpoenas which sought general statistical information concerning all of the employees by race and sex and on all employee promotions by race and sex since 1973,

The judgment of the District Court in No. 77-1348, to the extent that said judgment refused or deferred enforcement of subpoenas issued by petitioner-appellant to defendant-appellee for the following three items, namely:

1. Copy of EEOC Detail Report. Use Program Run 103018, Step A.

2. List of current employees. Use Program Run 103001, Step C.

3. List of all persons promoted since January 1, 1973. Use Program Run 103002, Step C.

is in said part reversed, since we find these statistics to be readily available on the employer's computer, and since we find said statistics relevant to the question of class certification; and

Further, in No. 77-1349 the judgment of the District Court is affirmed for the reason that no proceeding under the Freedom of Information Act is involved in this case and we are unable to find any relevancy to the underlying Equal Employment Opportunity Act dispute.

Entered by order of the Court

John P. Hehman
Clerk

Issued as Mandate: September 4, 1979

COSTS: To be recovered by appellant, E.E.O.C.:

Filing fee	$---
Printing	$235.65
Total	$235.65

APPENDIX B

In The United States District Court
For The Western District of Tennessee
Western Division

Equal Employment Opportunity
Commission,

Petitioner,

v. No Misc. 1239

Shelby County Government,

Defendant.

ORDER
(Filed January 17, 1977)

On December 22, 1976, the EEOC filed an application for an order requiring obedience on the part of the defendant to subpoena duces tecum and a subpoena ad testificandum growing out of an investigation with regard to a charge filed by one Hughley Moore v. Shelby County Government, Charge No. TME4-0688.

Attached to the application for the order were an affidavit, together with other attachments, showing the steps preceeding the application on the part of the EEOC. The Court set January 14, 1977, as a date in an Order for the defendant to show cause why the application should not be granted. On the date before the show cause hearing, the defendant filed a motion for a continuance and the petitioner filed its objection to the defendant's motion for a continuance. Further, the plaintiff moved that a subpoena decus tecum, issued by the defendant, which would require the taking of the Memphis EEOC Manager's deposition and the production of documents, be quashed because, it was not necessary for such evidence in respect to a meaningful adversary hearing with regard to the show cause scheduled but two days following.

At the hearing, the Court considered the petitioner's position as set forth in the statement and argument of counsel and in respect to the matters already filed of record, and also considered the defendant's memorandum and the defendant's affidavit and other matters presented.

The defendant took the position that the EEOC had exceeded its statutory investigatory powers by issuing the subpoena in question for the defendant's records relating to countywide personnel and took the further position that the EEOC had acted arbitrarily and capriciously in denying a prior administrative petition by the defendant to revoke the EEOC's subpoena ad testificandum and/or for duces tecum.

The Court concludes, after consideration of the entire record, that the EEOC has not exceeded its statutory investigatory powers by pursuing the request for further information with regard to an investigation of the defendant's records relating to the charge of Hughley Moore. Further, the Court finds that the EEOC did not act arbitrarily and capriciously in denying the defendant's petition to revoke, administratively the EEOC's subpoena in furtherance of its investigation.

Accordingly, the Court grants the petitioner's application for a subpoena with regard to the following items of attachment to subpoenaes ME-015, dated May 20, 1975, in Charge No. TME4-0688:

1. A list of persons who applied for the position of Assistant Personnel Director in 1972.

2. A list of persons who applied for the position of Safety Coordinator in 1972.

3. Copies of Personnel files of Hughley Moore, Jr., Ed Raines, Joe Braswell and George Trible.

Further, the Court orders that the defendant make available to the petitioner its records beginning in 1972, as requested, pertaining to an EEOC detailed report, list of current employees

and a list of persons promoted in the County Personnel Department, the County Administrative Office and the County Insurance Office, with all of which the claimant Hughley Moore, Jr. had a basis or connection.

The EEOC may file additional information with the Court with regard to any other class action type of charges pending against the defendant in order that the Court may determine whether further records and information should be made available by the defendant to petitioner with regard to the reasonably related investigation of the charge or charges in question.

This 17 day of January, 1977.

/s/ Harry W. Wellford
United States District Court Judge

APPENDIX C

In The United States District Court
For the Western District of Tennessee
Western Division

Equal Employment Opportunity Commission,

Petitioner,

v. No. Misc. 1239

Shelby County Government,

Defendant.

ORDER
(Filed March 4, 1977)

Pursuant to a prior Order of this Court dated January 13, 1977, [sic] the EEOC, petitioner herein, has furnished the Court with information concerning any additional charges pending against defendant, Shelby County Government, in order that the Court might make a determination on the issues in this cause relating to issuance of a broad subpoena for employment records of the Shelby County Government and all its branches and departments. There were three copies of uninvestigated charges submitted to the Court. The complaints are:

1. *MARY L. SAWYER:* Her complaint concerns race and sex discrimination in hiring and placement on the part of the Shelby County Government. According to the affidavit of John Wayne Bradford, Shelby County Personnel Director, Ms. Sawyer was an employee of the *Shelby County Quarterly Court* from June 2, 1975, until she resigned on December 31, 1975.

2. *THURMON HARRIS:* This complaint charges that his employer, the *Shelby County Health Department,* racially discriminated with respect to lay-offs and hiring.

3. *LOUISE B. REED:* The claim was that the *Shelby County Trustee* participated in racially discriminatory lay-offs.

The EEOC's petition here will be granted only insofar as the information sought relates to areas and departments indicated by the above pending charges and those only in addition to the department in which Hughley Moore, Jr. was associated.

Accordingly, defendant is ordered to make available promptly to petitioner the requested employment records pertaining to a copy of the EEOC Detailed Report, the list of current employees, and the list of all persons promoted since January 1, 1973, but *only* as said records are relevant to the Shelby County Quarterly Court, the Shelby County Health Department, and the Shelby County Trustee's Office. Any information outside the scope of the above departments is excluded from this Order.

The Shelby County Government is a large and varied institution. It covers many different operations, many entirely unrelated to others, different locations, distinctive service and/or political responsibilities, and many varieties of functions. A very few isolated charges of separate individuals as to racial discrimination in respect to hiring or promotion of blacks in a few areas of County Government does not reasonably give a basis for the broad, extremely wide-scale demands for records of the EEOC as to virtually all areas of County Government. This Court takes judicial notice of the fact that the Shelby County Quarterly Court itself consists of a number of black squires who are diligent to protect the interests of blacks generally, both within and without the framework of County Government.

If and as investigation based upon these records and complaints reasonably demonstrates a need for further information, this Order is not intended to preclude reasonable further related investigation in other appropriate areas or future demands for records in related departments or areas.

This case will now be deemed to have been finally determined and, unless a party seeks within thirty (30) days to retain it as an open file, it will be closed after that time.

This 4th day of March, 1977.

/s/ Harry W. Wellford
United States District Court Judge

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TME4-0688

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) Hughley Moore, Jr.
Phone Number 534-9304
Street Address 12456 Macon Rd.
City Collierville State TN Zip Code _____

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)
Race or Color [X]
Religious Creed [ ]
National Origin [ ]
Sex[ ]

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name Shelby County Government
Street Address 160 N. Main St. - Room 69
City Memphis State Tennessee Zip Code 38103
AND (other parties if any) _____

4 Have you filed this charge with a state or local government agency?
Yes [ ] When _____
MONTH DAY YEAR
No [X]

5 If your charge is against a company or a union, how many employees or members?
Under 25 [ ]
Over 25 [X]

6 The most recent date on which this discrimination took place:
Month Jan. Day 17 Year 1974

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)
I feel that Black employees are discriminated against by Shelby County Government as to salary and promotions. Whites with no experience and less education than I, have been given better jobs with higher pay. Whites have been given higher increases than Blacks when raises were given. I have had to complete and correct work of a white employee with a higher classification than mine.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date 1-17-1974 Hughley Moore, Jr.
(Sign your name)
Subscribed and sworn to before me this 17th day of January, 1974
Georgia R. Atkins (Name) Notary Public (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mial to the Regional Office. The Commission will help you to get the form sworn to.

UNITED STATES OF AMERICA
Equal Employment Opportunity Commission
District Office
MEMPHIS DISTRICT OFFICE

SUBPEONA AD TESTIFICANDUM/DUCES TECUM

No. ME-015
Charge No. TME4-0688

In the matter of Hughley Moore, Jr.
Shelby County Government

To: Mr. John Wayne Bradford, Director
Personnel, Shelby County Government
160 North Main Street, Room 777
Memphis, Tennessee 38103
(Address)

Request therefore having been made by the undersigned District Director YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE

Raymond Castro, Investigator
of the Equal Employment Opportunity Commission at
46 North Third Street - Suite 1004
in the City of Memphis, Tennessee

on June 4, 1975 at 10:00 o'clock a.m. of that day, to ☐ Testify ☒ Produce and bring with you at said time and place the following documents

The documents are described on the attached pages, on each of which the District Director's signature appears.

Pursuant to Section 1601.15, EEOC Procedural Regulations, 29 C.F.R. Section 1601.15, if the addressee intends not to comply with this subpoena, he must, within 5 days after the date of service (excluding Saturdays, Sundays and legal holidays) petition by mail, the Director of Compliance, 1800 G. Street, N.W., Washington, D.C. 20506 (also serving a copy upon the District Director named below) to revoke or modify the subpoena. The District Director will grant no extensions of time except in extraordinary circumstances. It is advisable that the addressee include a Certificate of Service as to the date on which the petition is mailed. The petition shall state each ground upon which it relies.

DATE
May 20, 1975

FOR THE COMMISSION (Signature)
s/ Charles A. Dixon

DISTRICT/DEPUTY DIRECTOR (Typed name)
Charles A. Dixon

NOTICE TO WITNESS. Witness fees for attendance, subsistance, and mileage under the Supoena, if any, shall be paid by Commission where the witness submits this subpoena with the voucher when claiming reimbursement to said District Office.

EEOC FORM 136
Nov. 72

Attachments to Subpena No. ME-015, dated May 20, 1975 in Charge No. TME4-0688.

1. Copy of EEOC Detail Report
   Use program run 103081 step A
2. List of current employees
   Use program run 103001 step C
3. List of all persons promoted since January 1, 1973
   Use program run 103002 step C
4. List of all persons who applied for the position of Assistant Personnel Director in 1972, annotated to show:
   (a) full name
   (b) race
   (c) copy of application
   (d) copy of Civil Service test and score for each applicant where applicable, and date fired
5. List of persons who applied for the position of Safety Coordinator in 1972, annotated to show:
   (a) full name
   (b) race
   (c) copy of application
   (d) copy of Civil Service test and score
   (e) where applicable, date hired
6. Copies of the personnel files of:
   (a) Highley Moore, Jr.
   (b) Ed Raines
   (c) Joe Braswell
   (d) George Trible

Date: FOR THE COMMISSION:
May 20, 1975
DISTRICT/DEPUTY DIRECTOR s/ Charles A. Dixon
Charles A. Dixon

S709(a) Civil Rights Act of 1964 [42 U.S.C. S200e-8(a)]

Sec. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Supreme Court, U.S.
FILED
DEC 21 1979
JR., CLERK

No. 79-723

In the Supreme Court of the United States

OCTOBER TERM, 1979

SHELBY COUNTY GOVERNMENT, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

LEROY CLARK
General Counsel

JOSEPH T. EDDINS
Associate General Counsel

BEATRICE ROSENBERG
Assistant General Counsel

ALLYSON K. DUNCAN
Attorney
Equal Employment Opportunity Commission
Washington, D.C. 20506

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-723

SHELBY COUNTY GOVERNMENT, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-2) and the opinions of the district court (Pet. App. A-4 to A-6 and A-7 to A-9) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 2, 1979. A timely petition for rehearing was denied on August 28, 1979. The petition for a writ of certiorari was filed on November 5, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals properly granted enforcement of an EEOC subpoena seeking employment information for an entire county government where the individual charge under investigation was a class charge and the county had centralized personnel practices.

STATEMENT

On February 6, 1974, Hughley Moore, Jr., filed a charge with the Equal Employment Opportunity Commission alleging that the Shelby County Government discriminated against black employees as to salaries and promotions (Pet. App. A-10 to A-11). As a part of its investigation of this charge, the Commission first sent a letter and then a subpoena directing Shelby County to produce three documents: (1) the EEOC Detail Report, which is a county report breaking down employees by, among other things, race and sex in each department; (2) a list of current county employees; and (3) a list of all persons promoted within the year preceding the filing of the charge (*id.* at A-14).

In response to the subpoena, Shelby County produced only a list of employees in the department in which Mr. Moore worked. The Commission then filed an application in federal district court for an order requiring obedience to the subpoena. The Commission also filed an affidavit by the director of the district office describing its efforts to secure voluntary compliance (Jt. App. 3, 8).[1]

At a hearing on the motion, Shelby County argued that it had provided the Commission with all the material relevant to Mr. Moore's charge, and that even if the charge raised class allegations the class could not extend beyond the department in which Mr. Moore worked (Jt. App. 98). The Commission argued, however, that its county-wide investigation was reasonable because Mr. Moore's charge against the county was a class charge, because a number of other class charges had been filed against county departments, and because of

[1] "Jt. App." refers to the Joint Appendix in the court of appeals.

the indications of pervasive discrimination that had been revealed during the investigation of those charges (*id.* at 99-100). The Commission also pointed out that, since the information sought was contained on two specifically identified computer tapes, the request was not burdensome (*id.* at 87).

The district court ordered enforcement of the subpoena but only with respect to three county departments (personnel, county administrative, and county insurance) in which Mr. Moore had either worked or applied for work (Pet. A-5 to A-6). At the same time, however, the court invited the Commission to file a list of other pending charges against the county, holding out the possibility that the enforcement order would be extended to other departments (Jt. App. 41).

The Commission thereafter presented three uninvestigated class charges to the district court. One of the charges was directed against Shelby County as a whole, one was directed against the county's Health Department, and one against the County Trustee (*id.* at 44-46). The Commission also submitted a list of 38 charges against various county offices which had been investigated only as to individual claims (*id.* at 42, 117).

The district court then expanded its order enforcing the subpoena to include the three departments in which the persons with the uninvestigated class charges were employed. The court refused, however, to expand its order to cover the county as a whole. The court concluded that, since Shelby County is a large and varied institution, isolated racial discrimination charges by separate individuals would not provide a basis for the broad scope of the Commission's investigation (Pet. App. A-8).

The court of appeals reversed, finding that the material sought was readily available and "relevant to the question of class certification" (Pet. App. A-2).

ARGUMENT

Petitioner contends (Pet. 7-13) that the subpoena should not have been enforced because there was an insufficient relationship between the charge and the information sought. The court of appeals, however, properly applied established legal principles to the facts of this case, and further review is unwarranted.

It is undisputed by petitioner that the Commission, in conducting an investigation of an employment discrimination charge, may ordinarily compel disclosure of information relevant to that charge. E.g., *EEOC* v. *University of New Mexico*, 504 F. 2d 1296, 1301 (10th Cir. 1974). So long as the information being sought "is relevant to the charge under investigation," its disclosure is required by Section 709(a) of Title VII, 42 U.S.C. 2000e-8(a).

The information sought by the Commission's subpoena is plainly relevant to its investigation of Mr. Moore's claim that the county was discriminating against blacks as a class in salaries and promotions (Pet. App. A-10 to A-11).[2] Indeed, Mr. Moore was in a particularly well-informed position to allege county-wide discrimination because he had access to county-wide personnel records while he was a clerk in the personnel department and also when he worked in the county administrative department. The Commission also showed that other

[2]Because the case is still in its investigatory stages and a complaint has not been filed, we assume that the court of appeals' reference "to the question of class certification" (Pet. App. A-2) was intended to refer to the class aspects of the charge.

uninvestigated charges alleged discrimination against blacks as a class and that there were individual claims against a number of different departments.

There was thus good reason to inquire into the policies of the county as a whole and to suspect that the information sought would be relevant to the several pending charges. The county-wide evidence could help identify whether the claims of the charging parties were unique or whether there is reason to believe that Shelby County discriminates against blacks as a group. See *Hazelwood School District* v. *United States*, 433 U.S. 299, 308 (1977). Even with respect to individual claims, the existence of a pattern of county-wide discrimination would be relevant to determine whether discrimination occurred in a particular personnel action or in a particular county department. See *Furnco Construction Corp.* v. *Waters*, 438 U.S. 567, 579-580 (1978).

Petitioner's argument that a single charge of discrimination cannot trigger an investigation of an employer as an entity when the employer consists of separate divisions which have independent hiring and promotion policies (Pet. 7) ignores the fact that Shelby County has centralized personnel policies by virtue of its statutes and its practices. The county has its own civil service system, providing for uniform service classifications, pay schedules, appointment and promotion procedures and personnel policies. 1957 Tenn. Priv. Acts, Ch. 279, at 830 (Senate Bill No. 728); 1971 Tenn. Priv. Acts, Ch. 110, at 830 (House Bill No. 736). Moreover, the record shows that the information sought is contained on identified and readily accessible computer tapes. This case is thus unlike those on which

petitioner relies (*EEOC* v. *Packard Electric Division*, 569 F. 2d 315 (5th Cir. 1978); *Joslin Dry Goods* v. *EEOC*, 483 F. 2d 178 (10th Cir. 1973)) where there were no centralized employment policies and where compliance may have been burdensome. Certainly in a case charging that the county is engaged in systematic racial discrimination, it is relevant to determine whether the discrimination is systematic, isolated, or non-existent.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

LEROY CLARK
General Counsel

JOSEPH T. EDDINS
Associate General Counsel

BEATRICE ROSENBERG
Assistant General Counsel

ALLYSON K. DUNCAN
Attorney
Equal Employment Opportunity Commission

DECEMBER 1979

DOJ-1979-12

Supreme Court, U. S.
FILED
JAN 7 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-723

SHELBY COUNTY GOVERNMENT,

Petitioner,

VERSUS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

GEORGE T. LEWIS, JR.
County Attorney
160 N. Main Street
Memphis, Tennessee 38103

STEPHEN H. BILLER
Assistant County Attorney
2020 First Tennessee Building
Memphis, Tennessee 38103

Counsel for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-723

SHELBY COUNTY GOVERNMENT,

Petitioner,

VERSUS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

Petitioner, Shelby County Government, replies to Respondent's Brief in Opposition to Petition for Certiorari as follows:

As the Petition for Certiorari in this case demonstrates, this Court should review the improper decision of the Court of Appeals for the Sixth Circuit which allows the EEOC to expand the scope of its investigation of the charge of Hughley Moore, Jr. beyond matters which are relevant to the charge. Despite respondent's attempts to justify the decision of the court of appeals, that decision remains in conflict with decisions of other circuits and in conflict with the letter and intent of provisions of Title VII of the Civil Rights Act of 1964.

The EEOC asserts in its Brief in Opposition that a large number of charges of discrimination have been filed against various departments of Shelby County Government, giving rise to an inference of "pervasive" or "systematic" discrimination by the County Government as a whole. However, the EEOC fails to point out that it has made a determination that there is no reasonable cause to believe that discrimination exists in twenty-one (21) of the thirty-two (32) investigations it has completed upon such charges. [Jt. App. 59 and 70 (H)]. In the face of its own determination of no discrimination in case after case, the EEOC cannot sustain a contention that these thirty-two (32) charges demonstrate pervasive discrimination which would support the unlimited county-wide probe it now seeks to undertake. Its investigation must now be focused on the charge of Hughley Moore, Jr., rather than upon other charges of discrimination which it has already

determined favorably to the various departments and agencies of the County which were involved.

The EEOC admits in its Brief in Opposition that of the thirty-five (35) charges other than the charge of Hughley Moore, Jr., only one purported to be filed against Shelby County Government as a whole. The remaining thirty-four (34) charges were filed against various departments or agencies of government which hired those employees and which are responsible for the action of those employees. This approach, which was consistently followed prior to this case, indicates that virtually all of the employees involved perceive that employment practices and policies emanate from the heads of various departments and agencies, rather than from a central County authority. There is no such central County authority to whom all County employees are accountable, and the mere language used in the charge filed by Hughley Moore cannot alter practices as they actually exist.

The EEOC also seeks to support a county-wide probe by citing provisions of the Tennessee Private Acts which establish a civil service system and appoint a personnel director, but respondent fails to point out to the Court that the County's policies are not as centralized as it implies. The Private Act to which respondent refers provides:

> [The Personnel Director] shall *when called upon to do so by the several departments* under the direction and supervision of the County Commissioners and the County officers enumerated in Section 27 hereof seek out, interview and *recommend for employment* to the several departments and offices persons to fill the personnel requirements of said departments and offices.
>
> 1957 Tenn. Priv. Acts,
> Ch. 279, §30 (Sen. Bill No. 728)
> (Emphasis supplied.)

Under this provision the personnel director becomes involved in personnel decisions only if he is invited to do so by an official in the department which is seeking an employee. Furthermore, the personnel director's participation is limited to the making of recommendations. Decisions concerning employment and conditions of employment are not made by a centralized process, but are made by the individual departments for which the employees work. By any reading, this act does not prove otherwise.

Under these circumstances the Sixth Circuit should have followed the lead of the Tenth Circuit in *Joslin Dry Goods Co. v. EEOC*, 483 F.2d 178 (10th Cir. 1973) and of the Fifth Circuit in *EEOC v. Packard Electric Division, General Motors Corp.*, 569 F.2d 315 (5th Cir. 1978), by limiting the scope of the EEOC's investigation to "that employing unit or work unit from which came the decision of which the individual complainant complains." *Id.* at 318. The district court took this course of action, and by its reversal, the Court of Appeals for the Sixth Circuit has placed itself in conflict with the Fifth and Tenth Circuits.

In this case the County has already granted the EEOC access to records of the County Personnel Department, County Administrative Office, and County Insurance Office, with all of which the District Court found the claimant, Hughley Moore, Jr., had a "basis or connection." These departments constitute Hughley Moore, Jr.'s work unit or employing unit within the rationale of the *Joslin Dry Goods* and *Packard Electric Division* cases. The EEOC should not be allowed access to records of entirely separate employing units with which Hughley Moore, Jr. has no connection. Hughley Moore, Jr. has no connection with employment decisions or practices relating to guards at the Shelby County Penal Farm, deputy clerks at the Shelby

County Circuit Court, nurses at a Shelby County hospital, teachers at a Shelby County school or any of the other departments or agencies for which the approximately 6,000 employees of the Government work. (Jt. App. 16).

WHEREFORE, certiorari should be granted as prayed to review the decision of the Court of Appeals for the Sixth Circuit which allows the EEOC, contrary to the decisions of other circuits and the provisions of Title VII, to investigate employment practices which are not relevant to the charge under investigation.

GEORGE T. LEWIS, JR.
County Attorney
160 N. Main Street
Memphis, Tennessee 38103

STEPHEN H. BILLER
Assistant County Attorney
2020 First Tennessee Building
Memphis, Tennessee 38103

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of January, 1980, three copies of the foregoing Reply to Brief in Opposition have been mailed by United States mail, postage prepaid, to Sharon Danch, Attorney, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C., 20506, counsel for respondent, and Solicitor General of the United States, Department of Justice, Washington, D.C., 20530. I further certify that all parties required to be served have been served.

